

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE:)	
)	
PAUL R. RUFO)	CASE No. 6:12-bk-03238-ABB
)	CHAPTER 7
)	
Debtor.)	
_____)	

**ORDER DENYING TRUSTEE’S MOTION TO STRIKE AND
OVERRULING TRUSTEE’S OBJECTION TO DEBTOR’S CLAIMS OF EXEMPTIONS**

THIS CASE came before the Court for Final Evidentiary Hearing on September 24, 2012 at 2:30 p.m., on the Trustee’s Objection to Debtor’s Claims of Exemptions (Doc. No. 16) filed on June 14, 2012 and the Debtor’s Response to the Objection (Doc. No. 20). The parties filed post-hearing briefs at the request of the Court (Doc. Nos. 26 & 27). The Trustee’s submission moved to strike Debtor’s proposed findings of fact and conclusions of law (Doc. No. 27).

The motion to strike is due to be denied and the objection is due to be overruled. Debtor’s claims of exemptions pursuant to 11 U.S.C. Section 522(b)(3)(B) are allowed. The Court makes the following findings after reviewing the pleadings and evidence and being otherwise fully advised in the premises.

Objection to Debtor’s Claims of Exemptions

Factual Background

The Debtor filed his Chapter 7 petition on March 13, 2012. He claims several parcels of real property, shares of stock in closely held businesses, a membership in a fishing club, a 2007 Chevy Tahoe, a 2006 Sea Pro motor boat and trailer, office equipment, and some personal

property are exempt property pursuant to 11 U.S.C. Section 522(b)(3)(B), as property owned as tenants by the entirety with his non-filing spouse (“the Property”) (Doc. No. 1).

The Trustee initially made a blanket objection, arguing “either joint debt exists between the Debtor and his non-filing spouse, the Property does not meet the characteristics of entirety property . . . , or the Property is owned as joint tenants or tenants in common.” (Doc. No. 16).

The Trustee has since limited his objection to one ground: the Debtor has scheduled joint debt, and property held in tenancy by the entirety is not exempt as to joint creditors (Doc. No. 27 at 3). The Trustee seeks to administer the Property.

Legal Analysis

The Trustee is the objecting party and has the burden of establishing by a preponderance of the evidence that the Debtor’s exemptions are claimed improperly. Fed. R. Bankr. P. 4003(c); see also In re Anderson, 132 B.R. 657, 661 (Bankr. M.D. Fla. 1991) (holding objecting creditor did not present evidence to establish its status as a joint creditor with capacity to have process issue).

Property held in joint tenancy is exempt to the extent the interest “is exempt from process under applicable nonbankruptcy law” pursuant to Section 522(b)(3)(B). 11 U.S.C. § 522(b)(3)(B). “[T]he linchpin of the whole inquiry [under Florida law] is the existence of a joint creditor of the debtor and non-debtor who has the ability to have process issued in its favor.” Anderson, 132 B.R. at 660; see also In re Himmelstein (Grant v. Himmelstein), 203 B.R. 1009, 1013 (Bankr. M.D. Fla. 1996) (“[T]he trustee’s powers under 11 U.S.C. § 363 come into fruition when and only when he can stand in the shoes of a creditor who holds a joint in personam judgment against both spouses.”). This joint creditor “must be in existence at the time of the filing of the petition.” Anderson, 132 B.R. at 660.

The Trustee did not establish the existence of any joint creditors, of the Debtor and his wife, that had the ability to have process issue on the petition date. The Trustee presented no evidence of any delinquency on the joint debts he identifies (Doc. No. 27 ¶¶ 5-7). Debtor's counsel represented the debts are not delinquent. None of the creditors filed a proof of claim. Brevard County Clerk of Court records establish the debt, to Carriage Park Condo Association identified by the Trustee, was satisfied pre-petition by foreclosure sale of the condominium to the creditor on February 8, 2012.

Accordingly, it is hereby

ORDERED, ADJUDGED, and DECREED that the Trustee's Motion to Strike (Doc. No. 27) is hereby **DENIED**; and it is further

ORDERED, ADJUDGED, and DECREED that the Trustee's Objection to Debtor's Claims of Exemptions (Doc. No. 16) is hereby **OVERRULED**; and it is further

ORDERED, ADJUDGED, and DECREED that the Debtor's claims of exemptions on the Property pursuant to 11 U.S.C. Section 522(b)(3)(B) are **ALLOWED**.

DONE AND ORDERED in Orlando, Florida on October 16, 2012.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge